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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,611	09/24/2003	Erik H.F. Wong	28341/6248.10	5620
4743	7590	11/07/2006	EXAMINER	
MARSHALL, GERSTEIN & BORUN LLP 233 S. WACKER DRIVE, SUITE 6300 SEARS TOWER CHICAGO, IL 60606			SPIVACK, PHYLLIS G	
			ART UNIT	PAPER NUMBER
			1614	

DATE MAILED: 11/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/669,611

Applicant(s)

WONG ET AL.

Examiner

Phyllis G. Spivack

Art Unit

1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 41, 44-51, 54 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 41, 44-51 and 54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Applicants' Response filed September 8, 2006 to the last Office Action is acknowledged. Claims 41, 44-51 and 54 remain under consideration.

The disclosure is objected to for the following informalities: The recitation in claim 41 "an individual suffering from fibromyalgia **and** other somatoform disorders" may be interpreted as fibromyalgia **or** other somatoform disorders. Further, the recitation in new claim 54 "somatoform NOS" should be written such that the meaning contemplated for "NOS" is clearly depicted.

Appropriate correction is required.

In the last Office Action claims 41 and 44-49 remained rejected under 35 U.S.C. 102(b) as being anticipated by Burrows et al., J. Clin. Psych.

Upon reconsideration, dysthymia is not a somatoform disorder. The rejection of record under 35 U.S.C. 102(b) is withdrawn.

Claims 41, 44-51 and 54 were rejected in the last Office Action under 35 U.S.C. 103(a) as being unpatentable over Fallon et al., Psychopharmacology Bulletin. It was asserted Fallon teaches the administration of the antidepressant fluoxetine to treat types of hypochondriasis, a somatoform disorder according to DSM-IV. Fibromyalgia is included among somatoform disorders.

Applicants argue just because Fallon teaches some of the known SRIs elicit favorable responses in hypochondriasis-suffering patients does not mean the skilled artisan would conclude all known SRIs would illicit such favorable responses.

Applicants' arguments have been read in their entirety but are not deemed to be persuasive.

Healy et al., Journal of Affective Disorders, which was presented in Applicants' Information Disclosure Statement on September 24, 2003, teaches the pharmacologic effects of reboxetine and fluoxetine were compared in multiple studies and repeatedly proved to be equivalent to each other. (The document is cited to provide support for the therapeutic equivalence of reboxetine and fluoxetine and is not intended to be part of the art rejection of record.) See the last paragraph in column two on page 315, as well as the last line of column two on page 316. Further, Healy teaches the administration of SSRIs such as fluoxetine to treat body dysmorphic disorder in column one, lines 26-29, page 318.

Both reboxetine and fluoxetine are well established in the prior art for use in the treatment of depression. Equivalent or similar results are observed in multiple studies comparing the two antidepressants. Therefore, in view of the prior art, one skilled in the psychiatry art would have been motivated to administer reboxetine in the treatment of somatoform disorders with a reasonable expectation of therapeutic success. Its efficacy in the treatment of depression closely parallels that of fluoxetine. The rejection of record under 35 U.S.C. 103 is maintained.

No claim is allowed.

THIS ACTION IS MADE FINAL. Applicants are reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this Final Action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this Final Action and the Advisory Action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the Advisory Action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the Advisory Action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this Final Action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Phyllis G. Spivack whose telephone number is 571-272-0585. The Examiner can normally be reached from 10:30 to 7 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Ardin Marscel, can be reached 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

November 4, 2006


Phyllis Spivack

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**PHYLLIS SPIVACK
PRIMARY EXAMINER**